IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9916 OF 2004

Kokan Vana Shramik Sangh ...Petitioner

Versus

The Director,
Forest Guard Training
Institute and anther ...Respondents

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Ms. Hutoxi Tavadia with M.M. Thorat counsel for Petitioner

Mr. S.K. Chincholikar, A.G.P. for Respondents.

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CORAM: B. H. MARLAPALLE, J.

DATED: 20TH JANUARY, 2005

P.C.:-

1. Heard Ms. Hutoxi Tavadia with Mr. Thorat, learned counsel for the petitioner Union which had approached the Industrial Court at Thane in complaint (ULP) No. 841 of 1998 and prayed for regularization of the employees listed in Annexure "A" to the complaint. The complaint was filed alleging Unfair Labour Practice under Items 5, 6, 9 and 10 of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971 and it was for the benefit of Mr. Laxman Parsu Vekhande and Mr. Balu Parsu Nichite, who continued to work at the Forest Guard Training Institute at Shahapur. It was alleged that Mr. Vekhende was working from

21.6.1990 whereas Mr. Nichite was working since February 1989 on daily wages but they were not given benefits of permanency. The Industrial Court after considering the evidence and the contentions of the respective parties, recorded the findings that the allegations of Unfair Labour Practice could not be upheld. It was noted that the establishment is a part and parcel of Forest Department of Government of Maharashtra and unless there were sanctioned vacancies for the posts occupied by the two daily wagers, it could not be held that the establishment was guilty of engaging in Unfair Labour Practice. The reasoning given by the Industrial Court in the impugned order dated 13.10.2004 dismissing the complaint cannot be termed as perverse or patently erroneous.

2. However, if these two employees have been working continuously and if they satisfied the requirements of the Kalelkar Award, there is no reason why they should be denied the benefits of the said Award. It would be, therefore, necessary for the petitioner Union to submit a representation to respondent No.1 with a copy to respondent No.3 for extending the benefits of Kalelkar Award to the two daily wagers viz. (1) Laxman Parsu Vekhande and (2) Balu Parsu Nichite. If such a representation is made within a period of four weeks from today, the respondent No.1

is directed to forward the same to respondent No.3 who shall decide the representation as per the rules and the Government Resolutions issued from time to time, within a period of two months thereafter.

3. The petition is disposed of in terms of the above directions. Writ to go forthwith to respondents.

4. It is made clear that the complaint filed was for seeking benefit of permanency and, therefore, the failure to seek benefit would not entail removal from the daily wages posts if such posts are still continued on the rolls.

5. Certified copy is expedited.